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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

CC Docket #96-98
 CCB/CPD 97-30

In the Matter of)

Request by ALTS for Clarification of the Commission's)
 Rules Regarding Reciprocal Compensation for)
 Information Service Provider Traffic)

CCB/CPD 97-30

REPLY COMMENTS OF KMC TELECOM INC.,
RCN TELECOM SERVICES, INC. AND
FOCAL COMMUNICATIONS CORPORATION

KMC Telecom Inc., RCN Telecom Services, Inc. and Focal Communications Corporation, by their undersigned counsel, submit these reply comments in support of the request by the Association for Local Telecommunications ("ALTS") for clarification of the Commission's *Local Competition Order*. As requested by ALTS, the Commission should clarify that nothing in the *Local Competition Order* was intended to alter the current regulatory practice governing reciprocal compensation for transport and termination of telecommunications traffic to information service providers, including Internet service providers ("ISPs").

The ILECs obviously believe that the present regulatory framework does not provide them with adequate compensation for the costs of calls to ISPs. In the Access Charge proceeding, the Commission considered the ILECs' contention that interstate access charges should be extended to ISP calls, and concluded that they should not. *Access Charge Reform Order* ¶ 345. The Commission noted that, to the extent the ILECs consider some intrastate rate structures to be inadequate, they "may address their concerns to state regulators." *Id.* ¶ 346. The Commission also stated that in its current *Internet NOI* proceeding,¹ it will "address a range of fundamental issues

¹ *Notice of Inquiry, Usage of the Public Switched Network by Information Service and Internet Access Providers*, CC Docket 96-263 (Dec. 24, 1996).

about the Internet and other information services, including ISP usage of the public switched network.” *Id.* ¶ 348. The Commission explained that “[t]he *NOI* will give us an opportunity to consider the implications of information services more broadly, and to craft proposals for a subsequent NPRM that are sensitive to the complex economic, technical, and legal questions raised in this area.” *Ibid.*

The ILECs, however, refuse to wait for the outcome of the *Internet NOI* proceeding, or to seek relief in State rate proceedings. Instead they are seeking to alter the present regulatory framework through the back door by unilaterally stopping payment of reciprocal compensation,² based on their belated discovery of a hidden intent in the *Local Competition Order* to change the present system. The Commission should clarify that the *Local Competition Order* was not intended to alter the regulatory framework for calls to ISPs. The need for or appropriateness of any such alteration must await the result of the *Internet NOI* proceeding, in which “the complex economic, technical, and legal questions raised in this area” can be addressed through normal agency notice and rulemaking procedures.

As was pointed out in the opening Comments,³ the ILECs are seeking a significant change in the current regulatory framework. The ILECs themselves have treated ISP calls as local calls for billing purposes where both the caller and the ISP are ILEC customers. In addition, seven State

² For example, after filing its Comments in this proceeding, Focal received notice from Ameritech that Ameritech will withhold reciprocal compensation for traffic terminated to Focal’s ISP customers in Illinois, although Ameritech continues to treat calls to ISPs within the local calling area as local for purposes of billing its own customers.

³ KMC Comments at 6-7.

commissions have agreed that calls to ISPs within the local exchange are local calls.⁴ If the current regulatory framework is to be changed, it should be done in notice-and-comment rulemaking proceedings specifically addressing the issues involved. It should not be done by a belated and erroneous interpretation of a passage in the *Local Competition Order* which does not even mention ISPs.

ALTS' petition is not affected by the decision of the United States Court of Appeals for the Eighth Circuit in Iowa Utilities Board v. Federal Communications Commission, Nos. 96-3321 et al. (8th Cir. July 18, 1997), rendered after the opening comments were filed. That decision interpreted the Communications Act to place certain limitations on the Commission's authority to take regulatory action concerning the local exchange market. But all ALTS is requesting the Commission to do is to clarify that in the *Local Competition Order* it was not taking regulatory action regarding reciprocal compensation for ISP calls, but intended to leave the present system unchanged. Obviously, any future regulatory action the Commission takes addressed to ISP calls, in the *Internet NOI* proceeding or elsewhere, will be subject to appropriate jurisdictional limitations. But the Eighth Circuit's decision does not constrain the Commission in clarifying that its prior Order

⁴ KMC Comments at 7; Focal Comments at 2, n.1. Since the initial comments were filed, the New York Public Service Commission affirmed the Staff decision referred to the initial comments and ordered New York Telephone and Rochester Telephone to continue paying compensation for local ISP calls. Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic, Dkt. 97-C-1275, Order Denying Petition and Instituting Proceeding (July 17, 1997) at p. 4. The Colorado Public Utilities Commission has also rejected a US West proposal to exclude reciprocal compensation for ESP calls from its tariff, explaining that it had "previously ruled in the arbitration decisions that enhanced service traffic is local traffic and should not be exempted from reciprocal compensation mechanisms." Dkt. 96A-331T, Investigation and Suspension of Tariff for Interconnection. Local Termination. Unbundling and Resale of Services (July 16, 1997) at 8.

was not intended to alter the existing regulatory framework.

The ILECs apparently believe that until they receive compensation that they deem adequate for ISP calls, the CLECs should not be compensated at all. To this end, they are seeking to create a regulatory vacuum, depriving the CLECs of any compensation unless and until the *Internet NOI* proceeding establishes a new system of charges. This they may not do. Under the present system, transport and termination is compensated either under the access charge system (which the Commission has decided does not apply to ISP calls within the local exchange) or reciprocal compensation. There is no third category for which no compensation at all is payable. If the present system is inadequate, the Commission should change it (to the extent of its jurisdiction), after public notice and comment, in the *Internet NOI* proceeding or another forum specifically addressing ISP issues. The ILECs may not unilaterally change the system by belatedly discovering a meaning in the *Local Competition Order* that was never intended.

Respectfully submitted,



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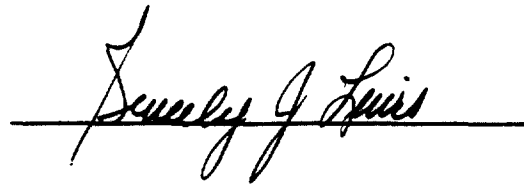
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and Focal Communications Corporation

Dated: July 31, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of July 1997, copies of the foregoing REPLY
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COMMUNICATIONS CORPORATION were hand delivered to those parties marked with an
asterisk, or by first class mail, postage prepaid, to each on the attached list.

A handwritten signature in cursive script, reading "Jeremy J. Lewis", is written over a horizontal line.

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